1951. File No. Cr. A DWR 51

'Legal DEPARTMENT Pt. I

Examined A BRANCH

Subject:— Criminal Appeals in the High Court of Bombay against the order of acquittals from Dhan. Distt.

(For subsequent proc. M. see Pt. II)

Criminal A. DWR. 51

File No. Part. I

Std. Sect. Slip 24-B

211-A

Copy of the judgment passed by the E.A.K. and Magte. III Class Ron on 19.3.51 in C.C.No.171/50.

..... Ex. No.16

In the court of Shri C.S.Patil, B.A. E.A.K. and Magistrate III Class Ron Taluka.

Criminal Case No.171/50

Complainant: Kenchawa Kon Sannasiddapa Basannawar of Asuti.

Accused :- 1) Yallapgouda Siddbasangouda Tammangoudar.
2) Argangouda Siddabasangouda Tammangoudar
and 3) Siddangouda Sudeppagouda Samani (Patil)
All of Asuti.

Offence : Section 323 and 504 I.P.C.

Date of offence: 3.12.50

Date of complaint: 5.12.50

The story of the complainant is that on 3.12.1950 (Sunday) the Complainant at about 8 O'Clock in the night was sitting on the katta in front of her house when accused Nos. 1 and 2 abused her in vulgar language in respect of some affair about lands to which the complainant told them to behave properly and to get the dispute settled through the village elders. Thereupon the accd.No.1 Yallapgouda beat the complainant with a stick on the arm and accused Nos.2 and 3 came there in the meanwhile and beat her on her head and back with their hands. Yallapgouda accd. No.1 dragged the complainant down from the Katta and the complainant fell down and broke her crown. That the complainant is under treatment at the hospital for the injuries. Shriyats Basangouda Ex.2 and Adiveppa Ex.3 separated the complainant while the 3 accused were beating the complainant.

The complainant has filed before this court on 5.12.50. Both the parties are represented by pleaders. The accused do not plead guilty. The points for determination are:-

1) Whether any hyrt or bodily pain has been caused to the complainant.
2) If so whether it has been caused by the three accused by any act of theirs.
3) Whether the hurt or bodily pain was caused intentionally or withthe knowledge that he is likely thereby to cause hurt to the complainant.
4) Whether any intentional insult has been offered to the Complainant by the accused, and thus gave cause for provocation, and
5) If so whether the accused intended or knew it likely such provocation will cause breach of peace by the complainant.

My finds on points Nos. 2 to 5 is in the negative and that one point 1 in the affirmative for the following reasons.

Point No.1. It is on record (Ex.11A) that when the complainant arrived at the hosiptal she had on her person 4 injuries as detailed in Ex.11A whatever the nature of wounds and the possibility of their being caused as a result of the alleged incident be, it remains a fact that she had injury on her forehead which all the witnesses affirm along with the fact that she was beaten. Though the complainant has only complained of beating by the accused it would not be out of place to discuss about the four injuries stated to have been found on the body of the complainant by the Doctor. The injuries noticed are one (1) Confusion on the outer part (Upper) of the left arm (2) Confused wound bone deep on the inner edge of the eye lash (3) Confusion on the upper side of the left nipple and (4) confusion on the left hip. The doctor is on opinion that the injuries might have been caused by the a blund hard substance. He is further asked of opinion that it is not impossible that injury No.1 could be caused by a fall that he does not think that injury No.2 can be caused by a fall, and that injury No.3 cannot be caused by a fall and No.4 may be due to or caused of a fall. That injuries Nos.1 and 4 were superficial and none of them were serious. Further they were fresh when the complainant attended the hospital. Injuries No.3 and 4 out of place in this case as it has not been complained that injuries were caused on those parts by the accused.

It could not even be presumed that injury No.3 was caused by the fall as the doctor is emphatic that it could not be caused by a fall., nor has it been caused by beating by a stick as the complainant has only complained of a beating on the arm. Then injuries Nos. 1 and 2 only remain. The doctor (M.O.) is of opinion that he does not think that that can be caused by a fall But the complainant and all the witnesses affirm that it was caused by a fall Medical opinion can be relied upon and as such, the complainant's story stands unsupported by medical opijion and therefore doubtful. Then what remains is only injury No.1 on the arm. It is alleged that the beating with a stick was on the left arm it may be due to that or due to the alleged fall. The Medical Officer has however stated that the wounds were fresh at the time of admittance into hospital. According to the complainant's story the wounds were caused on 3.12.50 at about 8 P.M. and she was admitted into the hospital about 8 P.M. on 4.12.50. There was a lapse of 24 hours in between and it is a wonder hoe those confusions (on remain fresh so long. One could understand often wounds being fresh even after such length of time. This makes the matter doubtful or why should there not be injuries caused later for reasons other than those alleged. However taking things as they are the freshness of the wounds (injuries) for such a long time surprises me and made me dountful. Had injury No.1 been caused by the fall as alleged then there must have been some dust or sand particles as she had fallen on her face But it is surprising to note that no such things were traced in the injury on the forehead was quite fresh. Points

Points II & III. Now the question whether the injuries found on the body of the complainant were caused by the Accused, and if so intentionally to cause pain etc. The complainant has alleged that on the day of the alleged incident she was sitting on the katta in front of her house. It was about 8 P.M. it was a dark night she could see things only at a distance of 5-6 feet, The accused came abusing her. Accd. No.1 lead and Accd. Nos. 2 & 3 were following. She recognised them where they were at a distance of about 15 feet Accd. No.1 was armed with a stick with which he beat her on the left arm and then dragged her down when she fell on her face. Thereafter Accd. Nos.2 & 3 beat her on the head and back and also accd. No.1 with the stick on the left arm for the 2nd time. Her head struck against the Katta and her forehead was injured and blood came out. Then witnesses Ex. Nos. 2,3 & 4 separated her from the accd's. It was then that she saw the witnesses for the 1st time. She showed them her blood soiled sari and the injury on the forehead that the witnesses did not enquire with her or the accused about the cause of the incident. She of herself got up and went and sat on her katta whereafter Ex.2 & 3 went away together, and thereafter Ex.4. About 10-18 persons had gathered and she could name none of them except the witnesses and one Mahadevappa Karkekatti. Now let me examine in detail how for these facts were supported by the 3 witnesses, who alleged to be eye witnesses Ex.Nos.2, 3 & 4 Ex.Nos. 2 & 3 like parrots repeat the very story of the complainant from the beginning to the end. while Ex. No.3 who comes in at later stage during the incident also related the beating of the accd. by accd. No.1,2 & 3 after her fall from the katta. From the statements of the witnesses Ex.2,3 & 4 in the examination in chief and the injuries reported by the Medical Officer and one would easily be mislead to conclude that the alleged offences have been committed by the accused and they stand guilty. But an inner and detailed examination of the depositiont of the complainant and the witnesses Exs.2,3 & 4 reveal the following materials discrepancies which are unexplainable and make the whole matter doubtful and rather suspicious. The complainant in her complaint has stated that accd. No.1 beat her with the stick while in the verification recorded on the same day she has stated that it was Ayyangouda and ? that beat her with the stick and accd. No.1 only dragged her from the the katta. But she again improves and her statement Ex.1 that it was accd. No.1 Yallappago da and not Ayyangouda that beat her with the stick. This kind of vascillation and indefiracy on the part of the complainant reflects on the truth of her statements. It is admitted by the complainant and others that it was a dark night and according to the complainant she could recognise or distinguish things at a distance of 5-6 feets only. But count not recognise people assembled round her on that account. If that be the case it is not known and requires to be explained how she could distinguish the accused from a distance of anout 20-25 ft. And more strange is that she could distinguish the stick in the hand of accd. No.1 at that distance. Further she has stated that she fell on her face and this fact has been corroborated by Es.2, 3 & 4. A person so fallen cannot naturally see things happening round him. But strangely though the complainant states the names of the persons who beat her with the stick on her arm and on her back and head while she so lay and also the order they then stood. She states that Accd. No.1 beat with the stick and behind him accd. No.3 and behind that person accd. No.2 were arranged. This could have been possible had she fallen with her face upwards or in the present case has she sunsequently moved into that position. She subsequently moved in But it is on record that she lay prostrates on her face She could not therefore have seen what she has stated.

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Her statement therefore that accd. No.1 beat her with the stick for the 2nd time and accds. Nos. 2 & 3 beat her on her head and back with their hands cannot be believed. There again she has stated that she showed the injury on the forehead to all witnesses Ex.2,3 & 4 and also the blood ~~on~~ soiled sari but this fact is not corroborated by any. Even the Police Patil Ex. has not made any panchanama about neither has this been produced before the court. The complainant cannot expect the court to believe in such a singular unsupported piece of evidence which would chang the whole current of the case. At the same time she has stated that none of the witnesses Ex.2, 3 & 4 enquired as to the caused of ~~all~~ the alleged offence and the injuries and they simply separated her and the accds. and went away. Further is no uniformity as to her place where she had fallen. Ex.11 States that she had fallen between the 2 kattas (there are two kattas on each side of the door) while Es.III States that she had fall fallen on the road and Ex.IV stated that she had fallen on the stairs. The complainant could not have fallen in three places unless she was dragged h here and there and no such thing has happened. Neither can these discriptions can be aby interpretation be taken to mean one and the same place. Had all the witnesses Exs.2,3, & 4 (alleged eye witnesses) been on the scene of offence as claimed there should not have differed on ~~the~~ a bare fact which a child could tell once seen with the naked eyes. Further is still one more important discrepancy which in my opinion sets at naught the very fact that Ex.Nos.2, & 3 were present on the scene of offence from the very begining and therefore makes their whole statemen either false or unbelievable. It is that Ex.Nos.3 has stated in the examination chief that Ex.No.4 came later there Ex.Nos.2. This presumes that he (Ex.No.3) was present on the scene of offence before Ex.2 arrived there otherwise the comperative statement above is meaningless. It meant to say Ex.No.2 coming to the scene of offence he having arrived there first. But this fact is contradicted by Ex.No.2 who has stated that he came first and then Ex.No.3 came. Even sup osing that Ex.Nos. 2 & 3 have related the details of the happenings from the beginning to the end i.e. from the complainant sitting on the katta to her being separated by them from the accused with the least change in all material factors. But in the corss examination Ex.No.3 has stated rather admitted that when he arrived on the scene of offence the complainant was prostrate on the ground etc. This means that he was not at all present and was not an eye witness to whatever that had taken place before that and earlier thereto i complainant being beaten by Accd. No.1 with stick, and being dragged down by the same accd. etc. is all false or is what he has been tutored to say. So is the case of in respect of Ex.No.2 because according to him they (Ex.No.2 & 3) arrived on thescene of offence at almost one and the same time and hence he could not have seen what had already passed. There is no question of choosing between the two. Both cannot be believed and I therefore reject their evidence. The fact that they could not have been present at the earlier stages which they state has been supported by the complainant herself for she (Ex.1) has stated that she saw for the first time when they were separating or rather on the scene of offence at the very beginning the complainant who recognised the accd: from distance of 20-25 feet could very well recognised them also. Then there remains the evidence of the Police Patil Ex.12. He states that he came hearing the noise and on coming over there he was unfortunately informed by the complainant and her husband that the accd. No.1 came to their house abused and beat the complainant. That he saw the injury on the forehead on but did not see the blood soiled sari. It was a minor injury and the incident was of triable and there was no breach of peace. Having come to know of the offence he should have reported the facts to the ~~offence he~~ concerned authorities, and attached blood soiled sari etc. under a regular panchnama. He has failed to do anything of this sort. But on the next day has all the way accompanied the complainant to Ron for filing a case. This is going out of the way and none no one could do so unless he was interested in the complainant. This makes the conduct of the Patil suspicious and I am afraid he seem to be a person interested in the complainant. Hence I am not inclined to give any importance or ~~evidence~~ evidentic value to his say little though it has as whatever he has stated is hearsay. There are similarly many more discrepancies which can be cited but I desist from quoting them as whatever I am already pointed is sufficient to discredit the evidence on the complainant's side and the sto story of the complainant. Last but not least is the fact that none from the neighbourhood of the complainant was present though the complainant raised a hue and cry when she was beat and though 10-20 and according to Ex.3 anout 100 persons had assembled. None of the witnesses including the complainant are able to cite one name of their neighbourhood, while th they all in common cite the names of Exs.2, 3 and 4 and done Shadevappa

Karkikatti. This makes the matters still more suspicious and unbelievable. I am therefore of opinion that the complainant has failed to prove her case to the hilt and that the injuries were caused intentionally and with the knowledge that they are likely thereby to cause hurt to her.

Points 4 & 5: As regards the other charge under Sec.504 there is no evidence to show that intentional insult was offered by the accds, to the complainant intending or knowing it to be likely that it would give provocation to the complainant to commit breach of the peace. In fact only some filthy words or vulgar abuses have passed and they do not constitute an offence under Sec.504I.P.C.

For the reasons fully discussed above and as I am of opinion that no prima facie case is made out or rather the evidence is incredible I acquit all the accused under Sec.25 Cr.P.C. and set them at liberty.

But I do not however find the complaint false and frivolous as I am convinced that minor incident did happen possibly due to the provocation offered on that day by the appearance of the Bailiff for giving Kabja of the land to be given as potgi to the daughter of the complainant who is stated to be the wife of the accd. No.3 not on good terms with him and therefore living with her mother etc. (Ex.1) I do not therefore proceed against the complainant under Sec.250 Cr.P.C.

Sd/- C.S.Patil
E.A.K. and Magistrate,
III Class Ron.

Ron.
19.3.1951

True Copy.

S 123

Judgment recorded by the High Court in Criminal Appeal No. 70 of 1951 (By the Government) in the case of State Vs. Chanavirappa @ Chandrappa Shekappa.

The Additional Assistant Government Pleader for the State.
Mr. Purshottam Tricumdas with Mr. N.H. Huggundy Advocate for the Accused.

Coram:- Gajendragadkar and Vyas, JJ.

20th March 1951.

Oral Judgment (Per Gajendragadkar, J.):-

This appeal is preferred by the State of Bombay against the order passed by the learned Sessions Judge at Dharwar acquitting the accused of the offence of murder with which he stood charged.

The prosecution case was that on or about the 17th of December 1940 the accused Chanvirappa had caused the death of his wife Nagawa with the intention of causing bodily injuries sufficient in the ordinary course of nature to cause her death and thus had made himself liable to be punished under section 302 of the Indian Penal Code. This case was tried by the learned Sessions Judge with the aid of assessors. Two out of the three assessors were of the opinion that the prosecution had failed to prove their case against the accused, whereas the third assessor was of the opinion that the accused was guilty. The learned Judge agreed with the majority opinion of the assessors and acquitted the accused of the offence charged. It is this order of acquittal which is challenged before us by the State of Bombay.

Now, the facts leading to the present prosecution are very few. It would appear that the deceased Nagawa had been married to the accused Chanavirappa more than twelve years before the date of the offence. They lived together for a very short period. Thereafter differences arose between the husband and wife, as a result of which Nagawa left her husband and began to stay with her parents. Both

the accused and the parents of Nagawa resided in Laxmeshwar. Both of them own lands which are situated at some distance from Laxmeshwar. The prosecution case is that on the 17th of December 1949 Nagawa had left her place in order to give bread to her brother Chanabasappa who was then working in the field of Shivappa Bellad. Shivappa was the brother-in-law of Nagawa and it is common ground that the family of Nagawa was cultivating this field. The prosecution further alleged that as Nagawa went near the field of Mudkappa she enquired from him where Chanabasappa was and when Mudkappa told her that Chanabasappa was working in the field of Dharmanta that afternoon, she told him to carry the bread to Chanabasappa across to the field where he was working on the ground that she wanted to collect vetetables from Shanbhogar's field. So saying, she left the bread with Mudkappa and went towards Shanbhogar's land. On the way Mudkappa and she had to cross Survey No. 293 which belongs to the accused. The prosecution case is that as she was passing by the field of the accused, the accused rushed on her in a mad fury and attacked her with an axe, as a result of which she died almost on the spot. The prosecution case was sought to be supported by the evidence of two witnesses Adiveppa and Basappa. Adiveppa was working as a collie in the field of the accused and he claims to have seen the assault himself. Basappa owns an adjoining field No. 305 and he claims to have been called by the accused to assist him in the concealment of the dead body of Nagawa. Another witness Basawannappa also attempted to support the prosecution case because he said that he had seen the accused carrying a bundle containing the dead body of Nagawa towards a tank where ultimately the bundle was dropped. This tank is in Survey No. 305 which Basappa was cultivating at the material time. Nagawa did not return home and so her brothers began to feel anxious on her account. Basawanappa, her brother, who was at home started

on an enquiry to find out the whereabouts of Nagawa. The search was continued almost throughout the night and it ended in the discovery of the gunny bag in the tank, as a result of which a complaint was made by Basawannappa that his sister had been done to death and that he suspected that the murder of his sister had been committed by the accused. Thereupon the investigation commenced, as a result of which the accused was charged with having committed the murder of his wife under section 302 of the Indian Penal Code. An alternative charge was framed against him under section 201 of the Code on the ground that he had concealed the dead body of his wife by putting it in a bundle and throwing the bundle in the tank. As I have already indicated, the learned Judge did not think that the evidence adduced by the prosecution in this case was enough to sustain the conviction of the accused. That is why he acquitted him of both the offences charged.

Now, the first point which falls to be considered in this appeal is whether the two witnesses Adivappa and Basappa are accomplices. On behalf of the State of Bombay, Mr. Thakor has contended that the learned Sessions Judge has been somewhat inconsistent in dealing with the evidence of these two witnesses. In some places in his judgment he has characterized these two witnesses as accomplices, whereas in one place he has stated that they are not accomplices properly so-called, and yet he has thrown out their evidence on the ground that unless their evidence is corroborated by indpendent evidence he would not be prepared to act on it. Mr. Thakor contends that Adiveppa and Basappa are not accomplices in the commission of murder and it would not be accurate to describe them as such or to throw not be accurate solely on the ground that, however reliable it may otherwise be, it is not corroborated by independent evidence. Now, it is true that under section 133 of the Indian Evidence Act an accomplice is a competent witness. It is also true that the evidence

of an accomplice is unworthy of credit as shown by illus-
-tration (b) to section 114 of the Indian Evidence Act.
There is a consensus of judicial opinion in holding that
it would be unsafe to accept the evidence of an accomplice
without material corroboration from independent evidence.
This rule of prudence has almost assumed the force of law.
Mr. Purshottam contends that the ratio underlying this
rule of prudence must apply with equal force to the
evidence of witnesses who may not be accomplices technically
so - called but who are no better than accomplices. In
the present case both Adiveppa and Basappa have taken
part in assisting the accused in concealing or disposing
of the dead body and despite their denial as to the part
that they took in the concealment of the dead body of
Nagawa, there would be no difficulty whatever in holding
that they would be accomplices of the accused in reference
to the offence under section 201 of the Indian Penal
Code if their story was accepted as true. So far there
is no difficulty. But when we proceed to consider whether
those two witnesses can be said to be accomplices of the
accused in respect of the offence of murder, we think
that it would not be correct to describe them as accomplices
in the technical sense of the term. It is true that Adiveppa
saw the commission of the offence and it may be that he did
not intervene so as to prevent the murder of Nagawa. It is
like-wise true that both Adiveppa and Basappa did not report
to the police authorities as to the commission of the offence,
though on the statements made by them they knew that an
offence had been committed and that the accused was the
offender. But we think that it would not be possible to
treat these two witnesses as accomplices merely from their
conduct just described. Mr. Purshottam has referred us to
several decisions dealing with this point and we might as well
briefly refer to them. In Alimuddin v. Queen Empress, I.L.
R. 23 Cal. 361, it was observed by Ghose and Hill, JJ.,
that where witnesses appeared to have taken an active part
in carrying away a person after he had been grievously

assulted and was in a helpless condition, and then leaving him in a field where he was subsequently found dead, the evidence of these witnesses was no better than that of accomplices. The learned Judges, however, proceeded to aid that at any rate, it would be most unsafe for the Court to rely upon their evidence, unless corroborated in material respects, in convicting the accused. To the same effect are the observations to be found in Ishan Chandra Chandra V. Queen - Empress. I.L.R. 21 Cal. 328 On the contrary, we have a judgment of the same High Court in Hafiuddi V. The Emperor, 38 Cal. W.N. 777. Dealing with the position of witnesses who witnessed the commission of the offence and did not make any report to the police authorities, it was observed in that case that it is not warranted by statutory provisions and in fact it leads to confusion of thought to regard a person who happens to be cognisant of a crime, or who has made no attempt to prevent it, or who does not disclose its commission, as practically an accomplice and to apply to his evidence the same rule as applies to the evidence of accomplices. In regard to the evidence of such witnesses, the learned Judges took the view that the real question would be what degree of credit could be attached to such evidence in all the facts and circumstances of the case. The Madras High Court has expressed a similar opinion on facts very similar to those before us. In Ramaswami Gouden v. Emperor, I.L.R. 27 Mad. 271, this is what the learned Judges observed:-

> "The witness (in question) was not an accomplice in the crime for which the accused was charged, inasmuch as he had not been concerned in the perpetration of the murder itself. Even assuming that, after the murder had been committed, the witness had assisted in removing the body to the pit, and that he could have been charged with concealment of

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the body under section 201 of the Indian Penal Code, that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associated with the accused in the crime of murder, or liable to be indicted with him jointly. The witness was therefore not an accomplice and the rule of practice as to corroboration had no application to the case."

With respect, we agree with this view. Even so, in dealing with the evidence of Adiveppa and Basappa, we cannot forget the fact that they have deliberately tried to minimize their part in the concealment of the offence and to that extent their evidence undoubtedly suffers from a serious infirmity.

Now, before we consider the evidence of Adiveppa and Basappa, it would be convenient to refer to some broad features of this case on which Mr. Purshottam has relied. The first fact which is significant is that the accused and the deceased Nagawa were staying apart from each other for more than twelve years before the commission of the offence and it is not suggested by any of the prosecution witnesses that though the husband and wife stayed separately in the same village and though presumably they must have crossed each other's way several times during this period, there was ever any incident between them suggesting that the husband nursed a grevance against his wife and showed that he would, when proper opportunity presented itself to him, do harm to her. It is suggested by the prosecution that a suit for maintenance had been filed by Nagawa against her husband. That no doubt is true. But the suit had been pending for four years before the date of the offence and it is not shown that it had reached a stage when evidence was led or where a judgment was about to be delivered so that the husband should feel indignant against his wife. Beyond the fact that a claim for maintenance had been -

Nagawa against her husband and that the said claim was pending in a Court of law, no other circumstance relating to the prosecution of the suity has been brought on record to justify the assumption that on the particular date on which the offence was committed or near about that time there was any special provication to the husband to commit this offence.

Then the first information which was filed by Basawanneppa discloses some unusual features. In this information Basawanneppa says that when she did not return home he with some others went out in search of Nagawa. Then he goes on to add that it was then found difficult to identify the field where they first went to search for the missing sister. Then he adds that "about two hours to day-break, we went to the field of Shanbhogar. There we found in the hut bundles of vegetables (such as cucumber and Hirikai) kept by my sister." In the hut he did not find his sister and so he and his companions began to suspect that something unhappy must have happened to his sister. Then at day break he asked his brother Channabasappa whether Nagawa had given him the bread. ~~[illegible]~~ His brother Channbasappa told him that she had not given him the bread, but Mudkappa had given him the bread. They went to question Mudkappa. Then Mudkappa told Basawanneppa that Nagawa had given him the bread on the ground that she wanted to go to the field of Shanbhogar's field. Suddenly it would appear that Basawanneppa thought of entering the tank of Bollad, and as he entered the waters of the tank a bundle either of a gunny bag or of a Kambal touched him. Some stones were placed on this bundle and by the mere feel of the bundle Basawanneppa says that he suspected that it must contain the dead body of his sister. Immediately he also suspected that that must be the work of his brother-in-law. This first information gives us no clue as to how Basawanneppa thought of going to the

tank. It also gives no explanation as to why Basawanne-appa did not first go to Chanbasappa to enquire about his sister. The prosecution story is that Nagawa had left the house with bread for her brother Chanbasappa. In that case the obvious thing to do was to go the Channba-sappa and find out where his sister was. That was not done. On the contrary, a considerable part of the night was spent in searching for Nagawa apparently from field to field. Then there is another fact which is disclosed by this first information, and on which Mr. Purshottam has naturally laid considerable emphasis. This informa-tion says that when they went to the field of Chanbhogar they found the bundles of vegetables kept by Nagawa. The statement as to this discovery is unequivocal and categorical and it leaves no room for doubt that the bundle which Basawanneppa discovered in the hut on the field of Chanbhogar had been kept by Nagawa. Now, Mudkappa's story was that Nagawa wanted to collect vegetables from the field of Chanbhogar and so she went towards Chanbhogar's field asking Mudkappa to carry the bread to her brother Chanbasappa. If that is so, it would appear that she reached the field of Chanbhogar, collected the vegetables and put them in a bundle and it was this bundle which Basawanneppa saw when he went to the field of Chanbhogar in search of his sister. When we reach thus far, we must find out as to why Nagawa thought it necessary to go back to the field of the accused. There can be no doubt whatever that if she was assaulted she could not have pursued her journey to Chanbhogar's field. The assault, by whomsoever it may have been committed, was so merciless that this poor lady died on the spot. That being so, the prosecution case that she was murdered near about the field of the accused remains unexplained in view of the discovery of the bag of vegetables which is found in Chanbhogar's field.

There is yet another point which called for

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an explanation from the prosecution and no explanation is forthcoming. Chanabasappa has definitely stated that on the day which the incident happened everbody in his house knew that he was going to work in Dharmantnavar's field which is Survey No. 270/a. It is true, as I have already mentioned, that the brothers of Nagawa were also cultivating Shivappa's field which is Survey No. 289. If Nagawa knew, and Channabasappa's evidence leaves no room for doubt that she must have known, that Chanabasappa had gone to work in Dharmantanvaris field, it is difficult to understand why she should have gone all the way to Mudkappa's land to deliver the bread to him. Mudkappa's land is roughly at a distance of six miles from the village of the parties, whereas Dharmantannavar's land is roughly at a distance of five miles. Nagawa could have easily avoided the unnecessary journey to Mudkhappa's field and could as well have given the bread to her brother in Survey No. 270/1 and then proceeded to Shanbhogaris land. This again makes the story improbable. No explanation has been given by any of the witnesses for the prosecution why Nagawa went as far as Mudkappa's field. If she went to Mudkappa's field on the assumption that her brother was working in Shivappa's land, she should have gone straight to that land rather than proceeded to Mudkappa's and enquired from Shivappa where her brother was. It is true that Mudkappa says that when she questioned him as to where her brother was, he told her that he was in Dharmantnavaris field. Having regard to the clear statement made by Chanabasappa that everybody in his family knew that he has working in Dharmantenavar's field that day, we feel no difficulty in rejecting this part of Mudkappa's evidence. It is with these additional infirmities that we have now to consider the evidence of the two witnesses Adiveppa and Basappa.

Adiveppa says that he was working as a coolie in the field of the accused and that as he was working

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he was that the accused suddenly rushed at Nagawa and did her to death. Now, he describes the arrival of Nagawa in these words:

"After we finished eating Nagawa came from the direction of the field of Sivanna M Bellad."

That would be so according to the story of Mudkappa. Immediately after she had a conversation with Mudkappa and gave him the bread to be given to her brother, she started to go to Shanbhogar's field. In that event, the discovery of the vegetables collected by her, so which the first information refers, would be throughtly inconsistent. If Nagawa came near the field of the accused and was assaulted by him, it must be after he collected the vegetables in Shanbhogar's field and not earlier. In that case, she would not appear like coming from the field of Shivappa Bellad, but in fact would be coming from a contrary direction. Ther the witness goes on to say that he rushed and in fact attempted to dissuade the accused, but the accused threatened him and asked him not to disclose what he had seen to anybody else. The witness then adds that the accused went to call Basappa and Brought him and that under the direction of the accused the corpse of Nagawa was tied in a bag and the bag was taken to the Bellad tank and was there safely deposited under the pressure of stones. This witness has obviously tried to minimize the part that he played in the concealment of the dead body and that, as I have already indicated, is a serious infirmity in his evidence when he claims that he tried to dissuade the accused from assaulting Nagawa. That, again, is a statement which it is difficult to believe. He says that he raised no shouts, nor did Nagawa raise any cries. That, again, is highly improbable. If he admitted that Nagawa had raised cries, he would have had to explain why cultivators from the adjoining lands did not rush on the scene. That is why he has deliberately stated that neither he nor Nagawa

raised any cries. If he was shocked by what the accused was doing to a defenceless women, he would have either intervened to assist the women or, if he had not that courage, certainly shouted for help. Therefore his story that he did not shout seems to be untrue. Then again, this witness says that he remained on the field on Saturday and the whole of Sunday. On saturday night he and the accused did not take any food. On Sunday he was supplied food by the people of the accused. On Monday he was sent for by the Police and in the evening of Monday his statement was recorded. This part of the story appears to be highly improbable. Apart from the fact that it is not explained by any evidence in this case as to how anybody came to know that Adiveppa was in possession of the information as to the commission of this xxx offence, it seems to us very difficult to believe that the accused could compel this witness to remain on his field the whole of Sunday.

Basappa supports Adiveppa to some extent. He says that the accused went to his field, confessed to him that he had committed the murder of his wife and asked him to assist him in the concealment of the dead body. Like Adiveppa, Basappa also pretends innocence. He says that he took no active part. In fact he did not at all like what the accused was doing. But the accused threatened him and so he was quiet and accompanied the accused and did whatever the accused asked him to do. This witness does not implicate the accused in the commission of the offence because he had obviously not seen the assult at all. He therefore purports to supply that deficiency by deposing to an extra-judicial confession made by the accused. It is hardly necessary to say that we are reluctant to accept this witness's story that the accused confessed before him that he had committed the murder of his wife. Like Adiveppa, he also does not appear to be a very reliable witness.

Then we have the evidence of Basawannappa who want to complete the story by alleging that he stood in his field and he saw the procession with the gunny bag going

towards the tank. This witness, however, admitted that when he was sent for by the Police they kept him in their custody for a fairly long time. He was with the Police the whole of Sunday and a substantial part of Monday and his statement was recorded in the evening of Monday. Basappa's statement also was recorded by the Police in the evening of Monday, for according to him he also remained in his field the whole of Sunday.

We have carefully considered the evidence of these three witnesses and we are satisfied that it would be wholly unsafe to act on their evidence. It is true that the learned Sessions Judge has not appreciated this evidence as he should have, because he took the view that the two witnesses Adiveppa and Basappa were accomplices and since their evidence was not corroborated by independent evidence he felt he could not convict the accused on the evidence of these witnesses even if that evidence was not otherwise untrustworthy. In fact, Mr. Thakor has fairly conceded before us that the appeal was preferred principally on the ground that the learned Judge had misdirected himself on a point of law as to the character of the two witnesses Adiveppa and Basappa. Unfortunately, therefore, we have received no assistance from the judgment of the learned Judge in dealing with the merits of this evidence. That is why we have carefully considered this evidence, but, having given our anxious consideration to that evidence, we do not think that we can come to any conclusion other than the conclusion reached by the learned Judge himself.

There is one more point which it is necessary to mention. After the accused was arrested, some of his clothes were attached and the Ankan which the accused wore is reported to have stains of human blood. At the earlier stage the accused denied the presence of human blood on the Ankan but in the Court of Session he admitted that it was his Anakn and that it was stained with human blood. He, however, explained that the blood was the result of an injury which he had ~~sustained~~ sustained, and it may be that this explanation is not

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satisfactory. The question we must ask ourselves is: is the presence of human blood on the Ankan worn by the accused sufficient corroboration to the evidence of the two witnesses. Adiveppa and Basap a that we could safely convict the accused of the offence charged. We do not think we can safely treat this circumstance as sufficient corroboration to the story of the two witnesses. The evidence of the two witnesses and the presence of human blood on this piece of apparel may raise suspicions against the accused. It may be that the suspicions may even be grave, but in a criminal trial we would not be justified in convicting an accused person merely on suspicions, however grave they may be. This is the whole of the evidence adduced by the prosecution in this case, On this evidence, then, we have come to the conclusion that the accused cannot be convicted of the offence charged. The said offence has not been brought home to the accused beyond a reasonable doubt. If that is the position with regard to the office under section 303 of the Indian Penal Code, it would be no better under section 201 of the Code. As regards this letter offence, the two witnesses Adiveppa and Basappa would clearly be accomplice and it would be wholly improper to consider their evidence as sufficient to convict the accused of the minor offence. As to this minor offence, there is no corroboration whatever.

The result is that the appeal fails and the order of acquittal passed by the learned Sessions Judge is confirmed.

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By the Court,

HJT.

Assistant Registrar.

Judgment recorded by the High Court in Criminal Appeal No. 70 of 1951 (By the Government) in the case of State Vs. Chanavirappa @ Chandrappa Shekappa.

The Additional Assistant Government Pleader for the State.
Mr. Purshottam Tricumdas with Mr. M.M. Kuggunda Advocate for the Accused.

Coram:- Gajendragadkar and Vyas, JJ.

20th March 1951.

Oral Judgment (Per Gajendragadkar, J.):-

This appeal is preferred by the State of Bombay against the order passed by the learned Sessions Judge at Dharwar acquitting the accused of the offence of murder with which he stood charged.

The prosecution case was that on or about the 17th of December 1949 the accused Chanvirappa had caused the death of his wife Nagawa with the intention of causing bodily injuries sufficient in the ordinary course of nature to cause her death and thus had made himself liable to be punished under section 302 of the Indian Penal Code. This case was tried by the learned Sessions Judge with the aid of assessors. Two out of the three assessors were of the opinion that the prosecution had failed to prove their case against the accused, whereas the third assessor was of the opinion that the accused was guilty. The learned Judge agreed with the majority opinion of the assessors and acquitted the accused of the offence charged. It is this order of acquittal which is challenged before us by the State of Bombay.

Now, the facts leading to the present prosecution are very few. It would appear that the deceased Nagawa had been married to the accused Chanavirappa more than twelve years before the date of the offence. They lived together for a very short period. Thereafter differences arose between the husband and wife, as a result of which Nagawa left her husband and began to stay with her parents. Both

the accused and the parents of Nagawa resided in Laxmeshwar. Both of them own lands which are situated at some distance from Laxmeshwar. The prosecution case is that on the 17th of December 1949 Nagawa had left her place in order to give bread to her brother Chanabasappa who was then working in the field of Shivappa Bellad. Shivappa was the brother-in-law of Nagawa and it is common ground that the family of Nagawa was cultivating this field. The prosecution further alleged that as Nagawa went near the field of Mudkappa she enquired from him where Chanabasappa was and when Mudkappa told her that Chanabasappa was working in the field of Dharmanta that afternoon, she told him to carry the bread to Chanabasappa across to the field where he was working on the ground that she wanted to collect vetetables from Shanbhogar's field. So saying, she left the bread with Mudkappa and went towards Shanbhogar's land. On the way ~~Mudkappa~~ and she had to cross Survey No. 293 which belongs to the accused. The prosecution case is that as she was passing by the field of the accused, the accused rushed on her in a mad fury and attacked her with an axe, as a result of which she died almost on the spot. The prosecution case was sought to be supported by the evidence of two witnesses Adivoppa and Basappa. Adivappa was working as a collie in the field of the accused and he claims to have seen the assault himself. Basappa owns an adjoining field No. 305 and he claims to have been called by the accused to assist him in the concealment of the dead body of Nagawa. Another witness Basawannappa also attempted to support the prosecution case because he said that he had seen the accused carrying a bundle containing the dead body of Nagawa towards a tank where ultimately the bundle was dropped. This tank is in Survey No. 305 which Basappa was cultivating at the material time. Nagawa did not return home and so her brothers began to feel anxious on her account. Basawanappa, her brother, who was at home started

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on an enquiry to find out the whereabouts of Nagawa. The search was continued almost throughout the night and it ended in the discovery of the gunny bag in the tank, as a result of which a complaint was made by Basawannappa that his sister had been done to death and that he suspected that the murder of his sister had been committed by the accused. Thereupon the investigation commenced, as a result of which the accused was charged with having committed the murder of his wife under section 302 of the Indian Penal Code. An alternative charge was framed against him under section 201 of the Code on the ground that he had concealed the dead body of his wife by putting it in a bundle and throwing the bundle in the tank. As I have already indicated, the learned Judge did not think that the evidence adduced by the prosecution in this case was enough to sustain the conviction of the accused. That is why he acquitted him of both the offences charged.

Now, the first point which falls to be considered in this appeal is whether the two witnesses Adivappa and Basappa are accomplices. On behalf of the State of Bombay, Mr. Thakor has contended that the learned Sessions Judge has been somewhat inconsistent in dealing with the evidence of these two witnesses. In some places in his judgment he has charactorized these two witnesses as accomplices, whereas in one place he has stated that they are not accomplices properly so-called, and yet he has thrown out their evidence on the ground that unless their evidence is corroborated by indpendent evidence he would not be prepared to act on it. Mr. Thakor contends that Adiveppa and Basappa are not accomplices in the commission of murder and it would not be accurate to describe them as such or to throw not be accurate solely on the ground that, however reliable it may otherwise be, it is not corroborated by independent evidence. Now, it is true that under section 133 of the Indian Evidence Act an accomplice is a competent witness. It is also true that the evidence

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of an accomplice is unworthy of credit as shown by illus-
-tration (b) to section 114 of the Indian Evidence Act.
There is a consensus of judicial opinion in holding that
it would be unsafe to accept the evidence of an accomplice
without material corroboration from independent evidence.
This rule of prudence has almost assumed the force of law.
Mr. Purshottam contends that the ratio underlying this
rule of prudence must apply with equal force to the
evidence of witnesses who may not be accomplices technic
so - called but who are no better than accomplices. In
the present case both Adiveppa and Basappa have taken
part in assisting the accused in concealing or disposing
of the dead body and despite their denial as to the part
that they took in the concealment of the dead body of
Nagawa, there would be no difficulty whatever in holding
that they would be accomplices of the accused in reference
to the offence under section 201 of the Indian Penal
Code if their story was accepted as true. So far there
is no difficulty. But when we proceed to consider whether
these two witnesses can be said to be accomplices of the
accused in respect of the offence of murder, we think
that it would not be correct to describe them as accomplices
in the technical sense of the term. It is true that Adiveppa
saw the commission of the offence and it may be that he did
not intervene so as to prevent the murder of Nagawa. It is
like-wise true that both Adiveppa and Basappa did not report
to the police authorities as to the commission of the offence
though on the statements made by them they knew that an
offence had been committed and that the accused was the
offender. But we think that it would not be possible to
treat these two witnesses as accomplices merely from their
conduct just described. Mr. Purshottam has referred us to
several decisions dealing with this point and we might as well
briefly refer to them. In Alimuddin v. Queen Empress, I.L
R. 23 Cal. 361, it was observed by Ghose and Mill, JJ.,
that where witnesses [redacted] part
in carrying [redacted]

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...ulted and was in a helpless condition, and then leavir him in a field where he was subsequently found dead, the evidence of these witnesses was no better than that of accomplices. The learned Judges, however, proceeded to aid that at any rate, it would be most unsafe for the Court to rely upon their evidence, unless corroborated in material respects, in convicting the accused. To the same effect are the observations to be found in Ishan Chandra Chandra V. Queen - Empress. I.L.R. 21 Cal. 328 On the contrary, we have a judgment of the same High Court in Hafiuddi v. The Emperor, 38 Cal. W.N. 777. Dealing with the position of witnesses who witnessed the commission of the offence and did not make any report etc the police authorities, it was observed in that case that it is not warranted by statutory provisions and in fact it leads to confusion of thought to regard a person who happens to be cognisant of a crime, or who has made no attempt to prevent it, or who does not disclose its commission, as practically an accomplice and to apply to his evidence the same rule as applies to the evidence of accomplices. In regard to the evidence of such witnesses, the learned Judges took the view that the real question would be what degree of credit could be attached to such evidence in all the facts and circumstances of the case. The Madras High Court has expressed a similar opinion on facts very similar to those before us. In Ramaswami Gouden v. Emperor, I.L.R. 27 Mad. 271, this is what the learned Judges observed:-

> "The witness (in question) was not an accomplice in the crime for which the accused was charged, inasmuch as he had not been concerned in the perpetration of the murder itself. Even assuming that, after the murder had been committed, the witness had assisted in removing the body to the pit, and that he could have been charged with the offence of

the body under section 201 of the Indian Penal Code, that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associated with the accused in the crime of murder, or liable to be indicted with him jointly. The witness was therefore not an accomplice and the rule of practice as to corroboration had no application to the case."

With respect, we agree with this view. Even so, in dealing with the evidence of Adiveppa and Basappa, we cannot forget the fact that they have deliberately tried to minimize their part in the concealment of the offence and to that extent their evidence undoubtedly suffers from a serious infirmity.

Now, before we consider the evidence of Adiveppa and Basappa, it would be convenient to refer to some broad features of this case on which Mr. Purshottam has relied. The first fact which is significant is that the accused and the deceased Nagawa were staying apart from each other for more than twelve years before the commission of the offence and it is not suggested by any of the prosecution witnesses that though the husband and wife stayed separately in the same village and though presumably they must have crossed each other's way several times during this period, there was ever any incident between them suggesting that the husband nursed a grevance against his wife and showed that he would, when proper opportunity presented itself to him, do harm to her. It is suggested by the prosecution that a suit for maintenance had been filed by Nagawa against her husband. That no doubt is true. But the suit had been pending for four years before the date of the offence and it is not shown that it had reached a stage when evidence was led or where a judgment was about to be delivered so that the husband should feel indignant against his wife. Beyond the fact that a claim for maintenance [redacted]

Nagawa against her husband and that the said claim was pending in a Court of law, no other circumstance relating to the prosecution of the suity has been brought on record to justify the assumption that on the particular date on which the offence was committed or near about that time there was any special provication to the husband to commit this offence.

Then the first information which was filed by Basawanneppa discloses some unusual features. In this information Basawanneppa says that when she did not return home he with some others went out in search of Nagawa. Then he goes on to add that it was then found difficult to identify the field where they first went to search for the missing sister. Then he adds that "about two hours to day-break, we went to the field of Shanbhogar. There we found in the hut bundles of vegetables (such as cucumber and Hirikai) kept by my sister." In the hut he did not find his sister and so he and his companions began to suspect that something unhappy must have happened to his sister. Then at day break he asked his brother Chanabasappa whether Nagawa had given him the bread. ~~[illegible]~~ His brother Chanabasappa told him that she had not given him the bread, but Mudkappa had given him the bread. They went to question Mudkappa. Then Mudkappa told Basawanneppa that Nagawa had given him the bread on the ground that she wanted to go to the field of Shanbhogar's field. Suddenly it would appear that Basawanneppa thought of entering the tank of Bellad, and as he entered the waters of the tank a bundle either of a gunny bag or of a Kambal touched him. Some stones were placed on this bundle and by the mere feel of the bundle Basawanneppa says that he suspected that it must contain the dead body of his sister. Immediately he also suspected that that must be the work of his brother-in-law. This first information gives us no clue as to how Basawanneppa thought of going to the

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tank. It also gives no explanation as to why Basawanna-appa did not first go to Chanabasap a to enquire about his sister. The prosecution story is that Nagawa had left the house with bread for her brother Chanbasappa. In that case the obvious thing to do was to go the Chanabasappa and find out where his sister was. That was not done. On the contrary, a considerable part of the night was spent in searching for Nagawa apparently from field to field. Then there is another fact which is disclosed by this first information, and on which Mr. Purshottam has naturally laid considerable emphasis. This information says that when they went to the field of Shanbhogar they found the bundles of vegetables kept by Nagawa. The statement as to this discovery is unequivocal and categorical and it leaves no room for doubt that the bundle which Basawanneppa discovered in the hut on the field of Shanbhogar had been kept by Nagawa. Now, Mudkappa's story was that Nagawa wanted to collect vegetables from the field of Shanbhogar and so she went towards Shanbhogar's field asking Mudkappa to carry the bread to her brother Chanbassap a. If that is so, it would appear that she reached the field of Shanbhogar, collected the vegetables and put them in a bundle and it was this bundle which Basawanneppa saw when he went to the field of Shanbhogar in search of his sister. When we reach thus far, we must find out as to why Nagawa thought it necessary to go back to the field of the accused. There can be no doubt whatever that if she was assaulted she could not have pursued her journey to Shanbhogar's field. The assault, by whomsoever it may may have been committed, was so merciless that this poor lady died on the spot. That being so, the prosecution case that she was murdered near about the field of the accused remains unexplained in view of the discovery of the bag of vegetables which is found in Shanbhogar's field.

There is yet another point which called for

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an explanation from the prosecution and no explanation is forthcoming. Chanabasappa has definitely stated that on the day which the incident happened everbody in his house knew that he was going to work in Dharmantnavar's field which is Survey No. 270/a. It is true, as I have already mentioned, that the brothers of Nagawa were also cultivating Shivappa's field which is Survey No. 289. If Nagawa knew, and Chanabasappa's evidence leaves no room for doubt that she must have known, that Chanabasappa had gone to work in Dharmantanvaris field, it is difficult to understand why she should have gone all the way to Mudkappa's land to deliver the bread to him. Mudkappa's land is roughly at a distance of six miles from the village of the parties, whereas Dharmantanavar's land is roughly at a distance of five miles. Nagawa could have easily avoided the unnecessary journey to Mudkhappa's field and could as well have given the bread to her brother in Survey No. 270/1 and then proceeded to Shanbhogaris land. This again makes the story improbable. No explanation has been given by any of the witnesses for the prosecution why Nagawa went as far as Mudkappa's field. If she went to Mudkappa's field on the assumption that her brother was working in Shivappa's land, she should have gone straight to that land rather than proceeded to Mudkappa's and enquired from Shivappa where her brother was. It is true that Mudkappa says that when she questioned him as to where her brother was, he told her that he was in Dharmantnavaris field. Having regard to the clear statement made by Chanabasappa that everybody in his family knew that he has working in Dharmantenavar's field that day, we feel no difficulty in rejecti g this part of Mudkappa's evidence. It in with these additional infirmities that we have now to consider the evidence of the two witnesses Adiveppa and Basappa.

Adiveppa says that he was working as a coolie in the field of the accused and that as he was working

was that the accused suddenly rushed at Nagawa and did her to death. Now, he describes the arrival of Nagawa in these words:

"After we finished eating Nagawa came from the direction of the field of Sivanna M Bellad."

That would be so according to the story of Mudkappa. Immediately after she had a conversation with Mudkappa and gave him the bread to be given to her brother, she started to go to Shanbhogar's field. In that event, the discovery of the vegetables collected by her, so which the first information refers, would be throughtly inconsistent. If Nagawa came near the field of the accused and was assaulted by him, it must be after he collected the vegetables in Shanbhogar's field and not earlier. In that case, she would not appear like coming from the field of Shivappa Bellad, but in fact would be coming from a contrary direction. Then the witness goes on to say that he rushed and in fact attempted to dissuade the accused, but the accused threatened him and asked him not to disclose what he had seen to anybody. else. The witness then adds that the accused went to call Basappa and Brought him and that under the direction of the accused the corpse of Nagawa was tied in a bag and the bag was taken to the Bellad tank and was there safely deposited under the pressure of stones. This witness has obviously tried to minimize the part that he played in the concealment of the dead body and that, as I have already indicated, is a serious infirmity in his evidence when he claims that he tried to disguade the accused from assaulting Nagawa. That, again, is a statement which it is difficult to believe. He says that he raised no shouts, nor did Nagawa raise any cries. That, again, is highly improbable. If he admitted that Nagawa had raised cries, he would have had to explain why cultivators from the adjoining lands did not rush on the scene. That is why he has deliberately stated that neither he nor Nagawa

raised any cries. If he was shocked by what the accused was doing to a defenceless woman, he would have either intervened to assist the woman or, if he had not that courage, certainly shouted for help. Therefore his story that he did not shout seems to be untrue. Then again, this witness says that he remained on the field on Saturday and the whole of Sunday. On saturday night he and the accused did not take any food. On Sunday he was supplied food by the people of the accused. On Monday he was sent for by the Police and in the evening of Monday his statement was recorded. This part of the story appears to be highly improbable. Apart from the fact that it is not explained by any evidence in this case as to how anybody came to know that Adiveppa was in possession of the information as to the commission of this ~~xxx~~ offence, it seems to us very difficult to believe that the accused could compel this witness to remain on his field the whole of Sunday.

Basappa supports Adiveppa to some extent. He says that the accused went to his field, confessed to him that he had committed the murder of his wife and asked him to assist him in the concealment of the dead body. Like Adiveppa, Basappa also pretends innocence. He says that he took no active part. In fact he did not at all like what the accused was doing. But the accused threatened him and so he was quiet and accompanied the accused and did whatever the accused asked him to do. This witness does not implicate the accused in the commission of the offence because he had obviously not seen the assult at all. He therepurports to supply that deficiency by deposing to an extra-judicial confession made by the accused. It is hardly necessary to say that we are reluctant to accept this witness's story that the accused confessed before him that he had committed the murder of his wife. Like Adiveppa, he also does not appear to be a very reliable witness.

Then we have the evidence of Basannappa who went to complete the story by all[illegible] that he stood [illegible] field and [illegible] with t[illegible]

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towards the tank. This witness, however, admitted that when he was sent for by the Police they kept him in their custody for a fairly long time. He was with the Police the whole of Sunday and a substantial part of Monday and his statement was recorded in the eventing of Monday. Basappa's statement also was recorded by the Police in the evening of Monday, for according to him he also remained in his field the whole of Sunday.

We have carefully considered the evidence of these three witnesses and we are satisfied that it would be wholly unsafe to act on their evidence. It is true that the learned Sessions Judge has not appreciated this evidence as he should have, because he took the view that the two witnesses Adiveppa and Basappa were accomplices and since their evidence was not corroborated by independent evidence he felt he could not convict the accused on the evidence of these witnesses even if that evidence was not otherwise untrustworthy. In fact, Mr. Thakor has fairly conceded before us that the appeal was preferred principally on the ground that the learned Judge had misdirected himself on a point of law as to the character of the two witnesses Adiveppa and Basappa. Unfortunately, therefore, we have received no assistance from the judgment of the learned Judge in dealing with the merits of this evidence. That is why we have carefully considered this evidence, but, having given our anxious consideration to that evidence, we do not think that we can come to any conclusion other than the conclusion reached by the learned Judge himself.

There is one more point which it is necessary to mention. After the accused was arrested, some of his clothes were attached and the Ankan which the accused wore is reported to have stains of human blood. At the earlier stage the accused denied the presence of human blood on the Ankan but in the Court of Session he admitted that it was his Anakn and that it was stained with human blood. He, however, explained that the blood was the result of an injury which he had ~~caused~~ sustained, and it may be that this explanation is not

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satisfactory. The question we must ask ourselves is: is the presence of human blood on the Ankan worn by the accused sufficient corroboration to the evidence of the two witnesses. Adiveppa and Basap a that we could safely convict the accused of the offence charged. We do not think we can safely treat this circumstance as sufficient corroboration to the story of the two witnesses. The evidence of the two witnesses and the presence of human blood on this piece of apperel may raise suspicions against the accused. It may be that the suspicions may even be grave, but in a criminal trial we would not be justified in convicting an accused person merely on suspicions, however grave they may be. This is the whole of the evidence adduced by the prosecution in this case. On this evidence, then, we have come to the conclusion that the accused cannot be convicted of the offence charged. The said offence has not been brought home to the accused beyond a reasobale doubt. If that is the position with regard to the office under section 302 of the Indian Penal Code, it would be no better under section 201 of the Code. As regards this letter offence, the two witnesses Adiveppa and Basoppa would clearly be accomplice and it would be wholly improper to consider their evidence as sufficient to convict the accused of the minor offence. As to this minor offence, there is no corroboration whatever.

The result is that the appeal fails and the order of acquittal passed by the learned Sessions Judge is confirmed.

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By the Court,

MJT.

Assistant Registrar.

Judgment recorded by the High Court in Criminal Appeal No. 1008 of 1951, (By Government) in the case of State Vs. Balaram Rajaram Tiwari - No. 1 and the other.

Mr. M.G.Chitale for the Government.

Mr. V.H.Gumaste for Accused No. 1.

Mr. G.N.Vaidya for Mr. V.N.Lokur for Accused No. 2.

Coram:- Rajadhyaksha & Vyas, JJ.

5th December 1951.

Oral Judgment (per Rajadhyaksha J.):-

This is an appeal by the Government of the State of Bombay against the acquittal of two persons who were accused Nos. 1 and 2 in the Trial Court. They, along with two other persons, were charged with having committed offences under Sections 379 and 409 of the Indian Penal Code and Section 129 of the Indian Forest Act.

In brief the prosecution case was this. Accused No.1 was a forest contractor and accused No. 2 was a coolie working at the Devikop Naka not far from the town of Hubli. Accused No. 3 was a forest guard working under Accused No. 4 who was a range forest officer. It was suggested that all the four accused persons entered into a conspiracy for the purpose of committing a theft of certain sandal-wood which was stored in the Devikop Naka. The prosecution case was that on the 2nd of November 1948 accused No. 1 hired a motor truck No. 1268 belonging to one R.G.Kulkarni from his driver witness Sanjiva. Accused No. 2 engaged Hamals and the truck left Dharwar at about 7 or 7-30 p.m. and proceeded to Devikop Naka. It reached Devikop Naka and out of the large amount of sandal-wood which was stored at the Naka, 35 trees and 24 branches were loaded into the truck. The goods were intended to be removed to Belgaum. After the goods were loaded by forest coolies, among whom was witness Hyamappa, the truck proceeded in the direction of Belgaum via Dharwar. After passing Dharwar, it went as far

as Kittur where the truck met with an accident. One Ladsab who was a friend of the driver Sanjiva was also given a lift in the truck and was present when the truck came to grief at Kittur. After the accident, a panchnama was made, and the sandal-wood was attached. Ladsab and Sanjiva and some other persons were admitted into the hospital where their injuries were treated. It is the prosecution case that when the goods were being removed, accused Nos. 1 and 3 were also in the truck. Ultimately, a charge-sheet was sent up against all the four accused. The charge against accused Nos. 1 and 2 was that they had committed a theft and had removed goods without a proper permit from the forest authorities. For this reason, they were charged with having committed offence under Section 379 of the Indian Penal Code and Section 129 of the Indian Forest Act. Accused Nos. 3 and 4 were said to have abetted the commission of these offences. Against accused Nos. 3 and 4, the charges were of criminal breach of trust with respect to the sandal wood which was entrusted to their charge and accused Nos. 1 and 2 were alleged to have abetted accused Nos. 3 and 4 in the commission of that offence.

In the course of the trial, the Learned Magistrate discharged accused No. 4. He further came to the conclusion on the evidence that accused No. 3 was not guilty although a charge had been framed against him. He therefore acquitted him of the offence under Section 409 and of the offence of having abetted accused Nos. 1 and 2 in the commission of offences under Section 379 of the Indian Penal Code and Section 129 of the Indian Forest Act. Then there remained the case of only accused Nos. 1 and 2. Against these two accused, the principal evidence was that of the driver Sanjiva and the coolie Dyamappa. The Learned Magistrate took the view that these two witnesses were accomplice witnesses and that their evidence could not be accepted without independent corroboration. He therefore refused to place any reliance upon their evidence. So far Ladsab was concerned, the Learned Magistrate was of the o/

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that he was under the influence of drink and that therefore his evidence could not be accepted. In the result therefore the Learned Magistrate thought that the case had not been brought home against all the three accused against whom charges had been framed. He accordingly acquitted all three of them. Against that order of acquittal the Government of the State of Bombay have come in appeal so far as the acquittal of accused Nos. 1 and 2 was concerned.

As I stated a little while ago, the evidence against the two accused consists principally of the evidence of Dyamappa the coolie and the evidence of Sanjiva the driver. According to the evidence of Dyamappa, accused No. 2 met him on the day in question and asked him to accompany accused No.2 for the purpose of bringing sandal-wood. The wages were fixed at Rs. 2/- per head. He went in a truck to Devikop Naka and there accused Nos. 1 and 2, Ladsab and some others were seen by him. The truck was loaded and then accused No. 1 and Ladsab sat in the front seat and accused No. 2 and the others sat behind. Next morning at about 8 A.M. the witness saw that the truck had come to grief and that he was involved in an accident. The evidence of Sanjiva is to the effect that he was the driver of motor truck No. DYX 1263 belonging to one Kulkarni. On the day in question accused Nos. 1 and 2 hired a truck from him for the purpose of carrying sandal-wood from Devikop to Belgaum. The hire charges were fixed at Rs. 300/- per trip. The agreement took place at Dharwar at about 6 or 6-30 P.M. and the truck left Dharwar at about 7 or 7-30 P.M. for Devikop Naka. They reached Devikop Naka at 9 or 9-30 P.M. There the truck was loaded with the sandal-wood with the assistance of witness Dyamappa. One Ladsab who was a friend of his and who was also a motor driver was promised to be given a lift by witness Sanjiva. After the truck was loaded at Devikop Naka, they proceeded in the direction of Belgaum and when they came as far as Kittur, the truck met with an ac as a result of which several persons were injured

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witness Sanjiva. Now, it has been argued by the Learned Assistant Government Pleader for the State that the Lower Court was wrong in regarding the evidence of these two witnesses as in the nature of accomplice evidence. It was contended that these witnesses could not be regarded as accomplices and that their evidence did not require any corroboration. We think there is considerable force in this submission. The test which has been laid down by this Court in Emperor Vs. Purn (1909) 11 Bom.L.R.1153, as regards the position of an accomplice is this. An accomplice confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion unless he confesses that he had a conscious hand in the crime or he makes admissions of facts showing that he had such hand. If the evidence of a witness falls short of these tests, he is not an accomplice; and his testimony must be judged on principles applicable to ordinary witnesses. It was urged by Mr. Vaidya on behalf of Accused No. 2 that the test laid down by this Court is not the only test and that some regard might be had to the observations of the Madras High Court in Ramaswami Gounden Vs. Emperor (1903) I.L.R.27 Mad.271. At page 227, the Learned Judges observed,

"The term 'accomplice' signifies a guilty associate in crime or, as it is put in another case, 'where the witness sustains such a relation to the criminal act that he could be jointly indicted with the defendant, he is an accomplice.' It is quite true that when a person could be indicted for the same offence with which the accused is charged, then he could be regarded as an accomplice. But we do not think that on the evidence as it stands, it was possible that the two witnesses Dyamappa and Sanjiva could have been indicted on their own statements as having been concerned in the commission of the offences. It is undoubtedly open to the accused to urge that one assisted in the loading of the goods and the other was the driver of the truck in which the goods were taken. But [illegible] some kind of knowledge is brought home to them that they were

aware of the fact that a theft was being committed, it was impossible to indict them along with accused Nos. 1 and 2. It was for this purpose that Mr. Gumaste for accused No. 1 attempted to show that on the evidence itself it was possible to say that these two witnesses were aware of the fact that an offence was committed in the removal of these goods. The principal point to which he invited our attention in this connection was the statement of the witness Sanjiva that Rs. 300/- were fixed as charges for the removal of the goods. The argument of the Learned Advocate was that the charges were fixed at a high figure because Sanjiva must have been aware that he was taking part in some clandestine affair and therefore demanded a high price. There is no evidence on record to show as to what the reasonable hire would be for the purpose of taking a truck from Dharwar to Dovikop Naka, from Dovikop Naka via Dharwar to Belgaum and back from Belgaum to Dharwar. The distance is roughly about 140 miles. There is again no evidence on record to show as to what the reasonable hire per mile in the case of a truck of this type would be. But normally, for a car, the charges are Re. 1/- per mile for return journey, and if we remember that a truck is a heavy vehicle which would require a considerable amount of additional petrol. It may be that the charges for the truck would be in the region of about Rs. 2/- per mile, and if that is so, then for 140 miles the charge of Rs. 300/- could not be regarded as excessive. But this is all speculation. If the accused wanted to rely on this fact as indicating some guilty knowledge on the part of Sanjiva, some evidence ought to have been led for the purpose of proving what the reasonable charges would be so that some inference could be drawn against this witness by reason of excessive charge. The Learned Trial Magistrate has chosen to comment upon the evidence of Sanjiva by saying that he was driving the car belonging to his master Kulkarni and that he had not taken the permission of Kulkarni for using the truck

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in this fashion. This may be an undesirable and perhaps an unjustified act on the part of Sanjiva vis-a-vis his own master But it appears that this truck was used for the purpose of carrying goods as a public carrier, and we do not think that only for this reason the evidence of Sanjiva should be disregarded. The truck was engaged at about 6 P.M. and was taken to the Devikop Naka somewhere about 7-30 or 8 P.M. This witness is definite that it was accused No. 1 who actually engaged the truck. There is nothing elicited in the cross-examination of the witness which would go to show that his evidence is unreliable or that he had any particular motive in involving a forest contractor and a coolie working in the Naka at Devikop.

So far as the evidence of Dyamappa is concerned, again there is nothing to show that he was aware of the fact that a theft was being committed, and that he assisted in the commission of that theft. Unless some kind of guilty knowledge is brought home to the accused or some admission elicited to that effect, it is difficult to regard these witnesses as accomplices. His evidence is also clear that it was accused No. 2 who engaged him for the purpose of loading the sandal wood into the truck. Then there is also the evidence of Ladsab who was a driver to whom a lift was given by the witness Sanjiva. His evidence has been disregarded by the Learned Magistrate purely on the ground that he had taken a drink. It appears that after the party went to Devikop Naka, and the goods were loaded in the truck, several of the persons partook of drink. Witness Dyamappa apparently was under the influence of the drink until he regained consciousness after the accident Sanjiva denies that he had taken any drink. Ladsab does say that he took a drink after the truck was loaded and afterwards he felt giddy. Although witness Sanjiva says that the drink was taken before they left Dharwar, the evidence of the other two witnesses appears to be that the drink was taken at Devikop Naka. The mere fact that the witnesses had taken a drink would

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not be a sufficient ground for discarding their evidence. The evidence of Ladsab was that when Sanjiva agreed to take Ladsab in his truck and give him a lift, the accused had objected and inspite of that objection Sanjiva agreed to give a lift to Ladsab. If Sanjiva was aware that they were taking part in some clandestine affair, Sanjiva would not have undertaken to give a lift to an outsider. This circumstance would therefore suggest that Sanjiva was not aware of the fact that he was an associate in doing something which was illegal. We are therefore of the opinion that the Learned Magistrate was in error in disregarding the evidence of these three witnesses. If the evidence of these three witnesses is accepted, as we are prepared to do, the guilt of accused Nos. 1 and 2 is proved beyond reasonable doubt.

So far as accused No. 2 is concerned, the Learned Assistant Government Pleader also invited our attention to a statement of accused No. 2 which was recorded by a Divisional Forest Officer. That statement was brought on record in the evidence of the Divisional Forest Officer. The Learned Magistrate has made a note that in exhibiting that document at Ex. 18, he was admitting it "subject to the final decision" We do not know what the final decision of the Learned Magistrate was. As he has not referred to it in the course of his judgment, we assume that the Learned Magistrate was prepared to ignore that statement. We do not think that the Learned Magistrate was right in doing so. The statement made before the Divisional Forest Officer is not a statement made before a Police Officer and a confession made by an accused person before a Divisional Forest Officer would not be irrelevant unless it could be proved that it was induced by threat or promise having reference to the charge against accused No. 2 and sufficient in the opinion of the Court to give accused No. 2 grounds which would appear to him to be reasonable that by making that statement he would gain some

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advantage in reference to the proceedings against him. There is no suggestion in the cross-examination of this witness to indicate that the statement was recorded as a result of any inducement or promise given by the Divisional Forest officer. We therefore think that the Learned Magistrate would have been entitled to act upon that statement. But the difficulty arises in this case because that statement had not been put to the accused himself, and we have nothing on record to show that accused No. 2 has to say about it. Under these circumstances, we do not think that that statement should be taken into consideration against accused No. 2.

But even apart from that statement, we think there is sufficient evidence to convict both accused Nos. 1 and 2 of the charges which have been brought against them.

We accordingly allow this appeal, set aside the order of acquittal and convict accused Nos. 1 and 2 under Section 379 of the Indian Penal Code and Section 129 of the Indian Forest Act.

We think that the offence committed by accused No.1 must be regarded as more serious than the offence committed by Accused No. 2. Accused No. 1 is a forest contractor and he must be aware of the fact that in doing what he is alleged to have done, he committed a serious offence. Accused No. 2 is only a coolie working at the Naka and may possibly have been induced by accused No. 1 to assist him in executing his plans.

We therefore sentence accused No. 1 to undergo Rigorous Imprisonment for three months and to pay a fine of Rs. 200/- or in default to undergo Rigorous Imprisonment for one month under Section 379 of the Indian Penal Code. We sentence him to undergo rigorous imprisonment for one month under Section 129 of the Indian Forest Act. The substantive sentences will run concurrently.

We sentence accused No. 2 to undergo Rigorous Imprisonment for one month and to pay a fine of Rs. 50/- or in default to suffer Rigorous Imprisonment for a further period

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of 15 days under Section 379 of the Indian Penal Code. We sentence him to undergo rigorous imprisonment for 15 days under Section 129 of the Indian Forest Act. The substantive sentences will run concurrently.

VCR:

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